

Internal Revenue Service
Tax Exempt and Government Entities Division

Department of the Treasury

Date:

Person to Contact/ID Number:

Contact Telephone Numbers:

Response Due Date:

Employer Identification Number:

Dear Sir or Madam:

We are conducting a compliance check of your Build America Bonds as part of our ongoing efforts to promote voluntary compliance with Federal tax requirements applicable to Build America Bond issuers. As more fully described below, we are asking you to complete the enclosed compliance check questionnaire about your Build America Bonds and your post-issuance compliance practices.

What is a Compliance Check?

This letter constitutes a compliance check. A compliance check is neither an audit nor an investigation under Internal Revenue Code section 7605(b) nor an audit under section 530 of the Revenue Act of 1978. A compliance check is a review by the IRS to determine adherence to certain requirements. This is not a review of an organization's books and records.

We have enclosed Publication 4386, *Compliance Checks*, which answers some frequently asked questions about compliance checks.

General Information

The Build America Bonds referred to in this letter are tax-advantaged bonds issued as described in section 54AA(g) of the Internal Revenue Code ("Direct Pay Bonds"). Issuers of Direct Pay Bonds may receive a refundable credit payment equal to a percentage of the interest payable on such bonds on each interest payment date.

The tax-advantaged status of Direct Pay Bonds remains throughout the life of the bonds if all applicable federal tax laws are satisfied while the bonds are outstanding. Various requirements apply under the Internal Revenue Code (the "Code") and Income Tax Regulations (the "Regulations") including information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements.

Unique Requirements for Build America Bonds/Direct Pay

Direct Pay Bonds have special requirements that must be followed. These special requirements are in addition to other requirements under the Code and the Regulations referred to above which apply generally to tax-exempt governmental bonds.

Capital Expenditure Requirement

With respect to Direct Pay Bonds, 100% of the excess of (1) *the Available Project Proceeds* of the issue, over (2) the amount in a reasonably required reserve with respect to such issue, must be used for capital expenditures. No amount of proceeds of Direct Pay Bonds may be used for working capital expenditures.

As used above, the term "*Available Project Proceeds*" means: (1) the amount of (a) proceeds from the sale of the issue, minus (b) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds) plus (2) the proceeds from any investment of the amount referred to in (1) above.

Put another way, the term "*Available Project Proceeds*" means (1) plus (2), where (1) equals the amount of proceeds from the sale minus the costs of issuance financed by the issue, and (2) equals the amount earned from investing the amount described in (1). The costs of issuance financed by the issue cannot exceed 2 percent of the proceeds from the sale of the issue.

De Minimis Premium Rule

A bond does not qualify as a Direct Pay Bond if the issue price of the bond has more than a de minimis amount of premium over the stated principal amount of the bond as described in section 54AA(g) of the Code. A de minimis amount of premium on a Direct Pay Bond is an amount that is not greater than 1/4 of 1 percent of the stated redemption price at maturity for the bond, multiplied by the number of complete years to the earlier of the maturity date for the bond or the first optional redemption date for the bond, if applicable. Generally, up to 2.5 percent of premium over the stated principal amount of the bond may be considered to be de minimis premium for bonds that mature in 10 or more years.

Irrevocable Election

Additionally, the issuer of Direct Pay Bonds is required to make an irrevocable election to have section 54AA(g) of the Code apply and must timely file a correctly completed Form 8038-CP, *Credit for Qualified Bonds Allowed to Issuer*, in order to receive payment of the credit from the government.

Continued Compliance

To comply with these and any other applicable Federal tax requirements, issuers of Direct Pay Bonds must ensure that the rules are met at the time the bonds are issued and throughout the term of the bonds. Generally, this includes the continued maintenance of records sufficient to establish compliance with all applicable Federal tax requirements until three years after the final maturity of the bonds. Also, continued maintenance of records related to periods before the bonds are issued and after the bonds mature is generally necessary, particularly in instances involving the reimbursement of prior expenditures or the refunding of prior bond issues.

What You Need To Do

Please complete the enclosed Form 14127, *Direct Pay Bonds Compliance Check Questionnaire*, and follow the instructions below for sending the questionnaire to us.

How To Send The Information To Us

Attach a copy of this letter to the front of the requested information, and send the information to us, by the due date shown above, using one of the following methods:

- Mail your reply to the address shown in the heading of this letter.
- Email your reply (in PDF format) or questions to teb.cpm@irs.gov and indicate "Direct Pay Bonds Questionnaire" in the subject line. Be sure to include your name, telephone number and the best time to reach you; as we will be replying to your questions by telephone. Note: This email address is for replies or questions related to this letter only, we cannot respond to other information or questions.

Failure to use the above mailing address or email address may result in processing delays. If an issuer fails to reply by the above date, we may forward one or more of the issuer's Direct Pay Bond issues for examination consideration.

In the spaces below, please provide an official's name, title, telephone number and most convenient time for us to call should we need to speak with someone regarding your Direct Pay Bond issue.

Name of official: _____ Title: _____

Telephone Number: () _____ Convenient Time for us to call: _____

More Information

Through our website at www.irs.gov/bonds you can access materials relating to Direct Pay Bonds including Notice 2009-26, *Build America Bonds and Direct Payment Subsidy Implementation* (click on [IRS Releases Guidance on ARRA Bond Provisions](#)) and Publication 4079, *Tax Exempt Governmental Bonds Compliance Guide*, which provides an overview of the Federal tax rules and filing requirements applicable to tax-exempt bonds. You can find answers to frequently asked questions about record retention requirements under "Frequently Asked Questions About Tax Exempt Bonds." In addition, you will find an article entitled, "After the Bonds are Issued: Then What?" in Publication 4344, *Report of Recommendations Advisory Committee on TE/GE*, intended for government officials in developing policies, procedures and systems to ensure that your bonds remain tax-exempt.

If you have any questions about this letter, you can contact the person named in the heading or email your questions to the address shown under How To Send The Information To Us.

Thank you for your cooperation.

Sincerely,

Manager, Tax Exempt Bonds
Compliance & Program Management

Enclosures:
Form 14127
Publication 4386